(1898), 32 App. D. 465, 53 N. Y. 1033; *Central R. R. Co.* v. *Jones* (1916), 18 Ga. App. 414, 89 S. E. 429; *Cartwright-Caps Co.* v. *Fischel & Kaufman* (1917), 113 Miss. 359, 74 So. 278.

MORTGAGES—FORECLOSURE BY JUNIOR MORTGAGEE NOT PARTY TO PRIOR FORECLOSURE OF SENIOR MORTGAGE.—A first mortgage was foreclosed by action and sale without the owner of a second mortgage being made party. The latter now sues to foreclose, making defendants the purchaser under the prior sale and his subsequent mortgagee, and asking that the land be sold and the proceeds applied in payment of the liens in order of priority. On the prior sale the land brought more than enough to satisfy the senior mortgage. The particular relief seems to have been opposed. *Held,* that complainant was entitled to the relief prayed. *Union Bank* v. *Cook,* Supreme Court of South Carolina, June 25, 1918, 96 S. E. 484.

Insofar as it holds that the former suit had, on the one hand, no efficacy to displace complainant's lien, but had, on the other hand, the effect of transferring to the purchaser thereunder all the rights of the parties thereto, and that the senior mortgage so acquired by the purchaser would not merge in the equity of redemption by the purchaser but would be kept on foot, on the principle of subrogation, and that the purchaser's equitable right to the benefit of the first mortgage passed to his subsequent mortgagee—to this extent, the case involves the application of unquestioned principles, though unusual in its circumstances. As to the propriety of the specific relief here granted, however, the authorities are not so clear. It would seem to be axiomatic that the former suit to which the junior mortgagee was not a party should not affect his remedies any more than his substantive rights, except in so far as it might operate as a transfer of the adverse interests and so require him to prosecute his remedies against different parties—a result which might have been brought about by voluntary conveyance. What, then, was the junior mortgagee's right of foreclosure before the prior suit? Although it is often stated that the only purpose of a foreclosure suit is to subject to the payment of the debt the estate which the mortgagor had at the execution of the mortgage, and hence that the only proper parties are the mortgagor and subsequent transferees and encumbrancers, it is generally conceded that a junior mortgagee may join a senior lienor, whose lien is matured, and have the premises sold free from both liens and the proceeds applied in satisfaction of both, in the order of their priority. *Hagen* v. *Walker,* 14 How. 37; *Cullum* v. *Erwin,* 4 Ala. 452; *Masters* v. *Templeton,* 92 Ind. 447; *Heimstreet* v. *Winnie,* 10 Ia. 430; *Emigrant Bank* v. *Goldman,* 75 N. Y. 127; *Person* v. *Merrick,* 5 Wis. 231. There is some doubt about the right of the junior mortgagee to force foreclosure of the senior mortgage over objection. *Foster* v. *Johnson,* 44 Minn. 290; *Missouri Trust Co.* v. *Richardson,* 57 Neb. 617; *Hudnit* v. *Nash,* 16 N. J. Eq. 550; *Bexar Building Assn.* v. *Newman,* 86 Tex. 380. It was said in the principal case that this could be done only upon a showing that the property would probably produce more than the amount of the senior encumbrance. But it is almost universally held that whatever right of foreclosure the junior mortgagee had in the first instance he still has

after a suit to foreclose the senior mortgage, to which he was not a party. *Catterlin* v. *Armstrong,* 101 Ind. 258; *Foster* v. *Johnson,* 44 Minn. 290; *Peabody* v. *Roberts,* 47 Barb. 91; *Besser* v. *Hawthorne,* 3 Ore. 129; *Turner* v. *Phelps,* 46 Tex. 251. See also *Alexander* v. *Greenwood,* 24 Cal. 506. *Contra, Rose* v. *Walk,* 149 Ill. 60, approved in *Rodman* v. *Quick,* 211 Ill. 546. 555.

PARTNERS AS TENANTS IN COMMON. — The Sewell's (plaintiffs below) claim title to certain mineral rights based on a conveyance "by John Sebastian to J. W. Sewell & Co., which was a partnership composed of John W. Sewell and Harriet Sewell—father and mother, respectively, of plaintiffs, whose rights descended in equal shares to plaintiffs, their children and heirs at law. The Kentucky Coal Co. claims through a devise by Sebastian subsequent to this conveyance." *Held,* "the deed to J. W. Sewell and Co. vested the legal title in the partners as tenants in common." *Kentucky Block Cannel Coal Co. et al.* v. *Sewell et al.* (C. C. A. 6th circ.) 249 Fed. 840.

The inadequacy of the terminology of common law tenure to describe accurately the nature of the conjoint holding by partners has frequently been mentioned (Cf. 9 COL. L. REV. 213, ff.; 29 HARV. L. REV. 163; 15 MICH. L. REV. 618, ff.) Lord HOLT, in *Heydon* v. *Heydon,* apparently considered partners as joint tenants and a vendee of either partner's interest a tenant in common with the other partners, but the rigid application of that doctrine in instances where parties were claiming through the rights of partners as such and not through their rights as tenants has caused the confusion that has been so often deplored. The use of the inaccurate terminology in the instant case will do no harm if it is plainly recognized that the court is describing the nature of the conjoint *holding* without reference to any partnership *activities* in dealing with the property. The Sewells—father and mother—received the property as tenants by entireties (being husband and wife) and dealt with it during their lives as partners. At their death their children and heirs at law received the interests of the parents and held, apparently, by the old common law title of coparceners, but as the Coal Company were claiming through a later conveyance of Sebastian and there was no question as to the partnership rights of the elder Sewells or any creditors of them as partners, the description of the elder Sewells as tenants in common may be considered as meaning nothing more than that they held conjointly under a conveyance which was prior to the one to the Coal Company and therefore they and their heirs took precedence in the chain of title. Any dispute as to the meaning of the decision would be avoided by the adoption of the terminology of our new UNIFORM PARTNERSHIP ACT. In Section 25 (1) of this Act a holding such as that of the elder Sewells is correctly termed a tenancy in partnership and for this terminology we have a good old common law precedent as early as the time of Edward III. (Cf. STATHAMS ABRIDGMENT OF THE LAW. Translated by Klingelsmith, p. 7; 15 MICH. LAW REV. 618, note 32.)

PERSONS SUBJECT TO MILITARY LAW.—Subdivision (d) of Art. 2, of the Articles of War, (Sec. 1342, R. S., as amended by Act of Congress, Aug. 29, 1916), relating to "persons subject to military law," reads: "(d). All re-